

Aug 4 4 25 PM '03

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This Instrument Prepared by  
and upon recording return to:

Leonard, O'Brien, Wilford, Spencer & Gale, Ltd. (GCS)  
100 South Fifth Street, Suite 1200  
Minneapolis, Minnesota 55402  
(612) 332-1030

BK 99 PG 590  
J.E. DAVIS CH. CLK.

Indexing Instructions:

Lot 1, Phase 2, Craft-Goodman  
Commercial Sub., PB 82, Pg 6;  
pt. Section 28, T1S, R6W.

### ASSIGNMENT OF LESSOR'S INTEREST

**THIS ASSIGNMENT OF LESSOR'S INTEREST ("Assignment")** is made as of August 1, 2003, by **Net Lease Development LLC**, a Delaware limited liability company ("**Assignor**"), in favor of **BNC National Bank**, a national banking association ("**Assignee**").

#### RECITALS

A. Pursuant to a Construction Loan Agreement, dated as of the date hereof (the "**Loan Agreement**"), between Assignee and Assignor, Assignee has agreed to make a loan to Assignor in a principal amount not to exceed One Million Three Hundred Sixty-Eight Thousand Dollars (\$1,368,000.00). Assignee is the holder of a Promissory Note, dated as of the date hereof, made by Assignor to the order of the Assignee (the "**Note**") evidencing such loan. The Note is secured by that certain Combination Deed of Trust, Assignment of Rents, Security Agreement and Financing Statement dated of even date herewith (the "**Deed of Trust**"), which Deed of Trust encumbers certain real property, the legal description of which is attached to this Assignment as Exhibit A and is by this reference incorporated herein (the "**Property**"). (The Loan Agreement, the Note, the Deed of Trust, this Assignment, and each other document executed or delivered in connection with this transaction are sometimes collectively referred to as the "**Loan Documents**").

B. In consideration of the Assignee's agreement to make the loan described in the Loan Agreement, to secure further the obligations of Assignor under the Loan Documents, and for additional good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor desires to grant to Assignee the assignment and other security interests under this Assignment.

#### AGREEMENT

Now therefore, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Assignor and Assignee agree as follows:

1. Assignment of Leases, Rents and Income. As further security for the performance of Assignor's obligations to Assignee under the Loan Documents (the "**Secured Obligations**"), Assignor hereby presently and absolutely grants, transfers, and assigns unto Assignee its entire right, title and interest as lessor with respect to all rental and tenancy agreements including, without limitation, that certain Lease dated July 31, 2003, as amended from time to time, by and between Assignor, as landlord, and Blazin

Wings, Inc., a Minnesota corporation ("**BWW**"), as tenant (collectively, the "**Leases**"), all rents, royalties, issues, profits, revenues, income and security deposits (including without limitation all operating income and payments in lieu of rents) (collectively, the "**Rents**") now or hereafter due and payable for the occupancy, use, or enjoyment of the Property, and all Leases, whether written or oral, with all security therefor, including all guaranties thereof, now or hereafter affecting the possession, use and enjoyment of the Property, on the condition that Assignee hereby grants to Assignor a license to collect and retain such Rents (but expressly not including the right to collect any rent more than one month in advance or any amount to prepay, terminate, or "buy out" any Leases) prior to the occurrence of any event of default under the Loan Documents. Assignor expressly covenants to apply the Rents received, after application for operating expenses permitted hereunder, to payment of the Secured Obligations as and when the same become due. Such license shall be revocable by Assignee without notice to Assignor at any time upon or after an event of default under the Loan Documents, and immediately upon any such revocation, Assignee shall be entitled to receive, and Assignor shall deliver to Assignee, any and all Rents theretofore collected by Assignor which remain in the possession or control of Assignor. It is the intention of the Assignor to create and grant, and it is the intention of Assignee to create and receive, a present and absolute assignment of all of the Rents now due or which may hereafter become due, but it is agreed that the Assignee's right to collect the Rents is conditioned upon the existence of an event of default under the Loan Documents. Failure of Assignee at any time or from time to time to enforce the assignment of Rents and Leases under this Assignment shall not in any manner prevent its subsequent enforcement, and Assignee is not obligated to collect anything hereunder, but is accountable only for sums collected.

2. Covenants Regarding Leases. Assignor agrees:

(a) Not to execute any Leases affecting the Property or any part thereof without the prior written consent of Assignee;

(b) That said Leases shall remain in full force and effect irrespective of any merger of the interest of the lessor and lessee thereunder; and that it will not transfer or convey the fee title to the Property to any of the lessees without requiring such lessees, in writing, to assume and agree to pay the Secured Obligations in accordance with the terms, covenants and conditions of the Loan Documents (permission to make such transfer not granted hereby);

(c) That if the Leases provide for the abatement of rent during repair of the Property by reason of fire or other casualty, the Assignor shall furnish rental insurance to the Assignee, the policies to be in amount and form and written by such insurance companies as shall be satisfactory to the Assignee;

(d) Not to collect any of the Rents for more than one (1) month in advance of the time when the same become due under the terms thereof;

(e) Not to discount any future accruing Rents;

(f) Not to execute any other assignments of said Leases or any interest therein or any of the Rents thereunder;

(g) That none of the rights and remedies of the Assignee under the Deed of Trust shall be delayed or in any way prejudiced by this Assignment;

(h) That notwithstanding any variation of the terms of the Deed of Trust or any extension of time for payment thereunder or any release of part or parts of the Property, the Leases and benefits hereby assigned, insofar as they relate to the unreleased Property, shall continue as additional security in accordance with the terms hereof;

(i) Not to request, consent to, agree to or accept a subordination of the Leases to any mortgage or other encumbrance now or hereafter affecting the Property and otherwise as provided in the Deed of Trust;

(j) To hold and account for all security deposits in the manner provided for under any state or local laws or ordinances applicable to the Property;

(k) Not to terminate, modify or amend the Leases or any of the terms thereof, or grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof without the written consent of the Assignee and that any attempted termination, modification, or amendment of the Leases without such written consent shall be null and void;

(l) To perform all of the Assignor's covenants and agreements as lessor under the Leases and not to suffer or permit to occur any release of liability of the lessees, or any rights to lessees to withhold payment of Rent; and to give prompt notices to the Assignee of any notice of default on the part of Assignor with respect to the Leases received from the lessees thereunder, and to furnish Assignee with complete copies of said notices;

(m) Not to alter, modify or change the terms of any guarantees of any of the Leases or cancel or terminate such guarantees without the prior written consent of Assignee;

(n) Not to consent to any assignments of the Leases, or any subletting thereunder whether or not in accordance with their terms (except to the extent BWB has the absolute right to do so under the terms of its Lease), without the prior written consent of the Assignee;

(o) Not to exercise any right of election, whether specifically set forth in any such Lease or otherwise, which would in any way diminish the tenant's liability or have the effect of shortening the stated term of the Lease.

3. Representations Regarding Leases. Assignor represents and warrants (a) that the Leases are in full force and effect; (b) that the Rents and the Leases have not been heretofore sold, assigned, transferred, or set over by Assignor or by any person or persons whatsoever; (c) that no material default exists on the part of the lessees thereunder, or the Assignor as lessor; (d) that no Rents have been paid by any of the Lessees for more than one month in advance; (e) that the payment of none of the Rents have been or will be waived, released, reduced, discounted or otherwise discharged or compromised by the Assignor directly or indirectly by assuming any Lessee's obligations with respect to other premises; and (f) Assignor has good right to sell, assign, transfer, and set over the same and to grant to and confer upon Assignee the rights, interests, powers, and authorities herein granted and conferred.

4. Further Assignments. Assignor shall give Assignee at any time upon demand any further or additional forms of assignment of transfer of such Rents, Leases, and security as may be reasonably

requested by Assignee, and, upon written request by Assignee, shall deliver to Assignee executed copies of all such leases and security.

5. Application of Rents. Upon exercise of its rights hereunder, Assignee shall be entitled to deduct and retain a just and reasonable compensation from monies received hereunder for its services or that of its agents in collecting such monies. Any monies received by Assignee hereunder may be applied when received from time to time in payment of any taxes, assessments, or other liens affecting the Property, regardless of the delinquency, or to any expenses of the Property, such application to be in such order as Assignee may determine, and any remaining sums actually collected pursuant to this Assignment shall be applied to reduce the amounts outstanding as Secured Obligations under the Loan Documents or any deficiency which may result from any foreclosure sale. The acceptance of this Assignment by Assignee or the exercise of any rights by it hereunder shall not be, or be construed to be, an affirmation by it of any Lease nor an assumption of any liability under any Lease.

6. Collection of Rents. Upon or at any time after an Event of Default under the Loan Documents shall have occurred and be continuing, Assignee may declare all sums secured hereby immediately due and payable, and may, at its option, without notice, and whether or not the Secured Obligations shall have been declared due and payable, either in person or by agent, with or without bringing any action or proceeding, or (at its option) by a receiver to be appointed by a court, (i) enter upon, take possession of, manage, lease, and operate the Property, or any part thereof (including, without limitation, making necessary repairs, alterations and improvements to the Property); (ii) take possession of all tangible and intangible personal property associated with the Property and in which Assignee has a security interest; (iii) make, cancel, endorse, or modify leases; (iv) obtain and evict tenants; (v) fix or modify rents; (vi) do any acts which Assignee deems reasonably proper to protect the security thereof; and (vii) either with or without taking possession of the Property, in its own name sue for or otherwise collect and receive the Rents, including those past due and unpaid. In connection with the foregoing, Assignee shall be entitled and empowered to employ attorneys, and management, rental, and other agents in and about the Property and to effect the matters which Assignee is empowered to do, and in the event Assignee shall itself effect such matters, Assignee shall be entitled to charge and receive reasonable management, rental and other fees therefor as may be customary in the area in which the Property is located; and the reasonable fees, charges, costs and expenses of Assignee or such persons shall be additional Secured Obligations. Assignee may apply all funds collected as aforesaid, less costs and expenses of operation and collection, including reasonable attorneys', legal assistants' and agents' fees, charges, costs and expenses, as aforesaid, upon any Secured Obligations, and in such order as Assignee may determine. The entering upon and taking possession of the Property, the collection of the Rents, and the application thereof as aforesaid shall not cure or waive any default or waive, modify or affect notice of default under any Loan Document or invalidate any act done pursuant to such notice. Nothing herein contained shall be construed as constituting Assignee as a trustee or mortgagee in possession.

7. Authority of Assignee. Any tenants or occupants of any part of the Property are hereby authorized to recognize the claims of Assignee hereunder without investigating the reason for any action taken by Assignee, or the validity or the amount of indebtedness owing to the Assignee, or the existence of a default or Event of Default under any Loan Document, or the application to be made by Assignee of any amounts to be paid to Assignee. The sole signature of Assignee or a receiver shall be sufficient for the exercise of any rights under this Assignment and the sole receipt of Assignee or a receiver for any sums received shall be a full discharge and release therefor to any such tenant or occupant on the Property; and

Assignor hereby releases each such tenant and occupant which makes payments to Assignee under this Section 7 from any liability under the applicable Lease or occupancy payment. Checks for all or any part of the rentals collected under this Assignment shall be drawn to the exclusive order of Assignee or such receiver.

8. Indemnification of Assignee. Nothing herein contained shall be deemed to obligate Assignee to perform or discharge any obligation, duty, or liability of lessor under any Lease of the Property, and Assignor shall and does hereby indemnify and hold Assignee harmless from any and all liability, loss, or damage which Assignee may or might incur under any Lease of the Property or by reason of this Assignment, except liability, loss or damage that occurs as a result of Assignee's gross negligence or unlawful or willful misconduct; and any and all such liability, loss, or damage incurred by Assignee, together with the costs and expenses, including reasonable attorneys' fees, incurred by Assignee in defense of any claims or demands therefor (whether unsuccessful or not), shall be additional Secured Obligations, and Assignor shall reimburse Assignee therefor on demand.

9. Release. Payment in full of all of the indebtedness secured hereby and by the Deed of Trust, and the recording of any valid release (but not the foreclosure) of the Deed of Trust shall operate as a release of this Assignment in favor of the then owner of the Property, provided, that the recording of any valid partial release of the Deed of Trust shall operate as a release of this Assignment only with respect to that portion of the Property thereby released from the Deed of Trust. In the event of foreclosure of the Deed of Trust, this Assignment shall not terminate until the expiration of all periods of redemption following the foreclosure sale.

10. Appointment of Receiver. Assignee shall be entitled, as a matter of absolute right and without regard to the value of any security for the Secured Obligations or the solvency of any person liable therefor, to the appointment of a receiver for the Property, the Leases, and the Rents upon ex parte application to any court of competent jurisdiction. Assignor waives any right to any hearing, or notice of hearing prior to the appointment of a receiver. Such receiver and receiver's agents shall be empowered:

(a) To take possession of the Property, Leases, and Rents and any business conducted by Assignor or any other person thereon and any business assets used in connection therewith and any Property in which Assignee has a security interest granted by Assignor and, if the receiver deems it appropriate, to operate the same;

(b) To exclude Assignor and Assignor's agents, servants, and employees from the Property;

(c) With or without taking possession of the Property, to collect the Rents;

(d) To rent, lease or let all or any portion of the Property to any party or parties at such rental and upon such terms as the Assignee shall, and to pay any leasing or rental commissions associated therewith in its discretion, determine;

(e) To complete any construction which may be in progress;

(f) To do such maintenance and make such repairs and alterations as the receiver deems necessary;

(g) To use all stores of materials, supplies and maintenance equipment Property and to replace and replenish such items at the expense of the receivership estate;

(h) To pay all taxes and assessments against the Property and any property which is collateral for the Secured Obligations, all premiums for insurance thereon, all utility and other operating expenses, and all sums due under any prior or subsequent encumbrance;

(i) To perform the obligations of Assignor under the Leases; and

(j) Generally do anything which Assignor could legally do if Assignor were in possession of the Property. All expenses incurred by the receiver or the receiver's agent shall constitute part of the Secured Obligations. Any revenues collected by the receiver shall be applied first to the expenses of the receivership (including attorneys' fees incurred by the receiver and by Assignee), together with interest thereon at the rate set forth in the Note from the date incurred until repaid, to expenses of the Property, and to preserve, protect, maintain and operate the Property and any other Collateral which is security for the Secured Obligations, and the balance shall be applied toward the Secured Obligations or in such other manner as the court may direct.

11. No Obligation; Third Party Beneficiaries. No provisions of this Assignment shall require Assignee to exercise any right or remedy available to Assignee under this Assignment or under any other Loan Document. At any time subsequent to Assignee exercising any right under this Assignment, either directly or through a receiver, the Assignee, or the receiver acting pursuant to court order, may terminate such action with liability and tender the right to collect Rents and/or the right to possess the Property to Assignor. There are no intended third party beneficiaries to any provision of this Assignment.

12. Further Assurances. Upon issuance of a deed or deeds pursuant to foreclosure of the Deed of Trust, all right, title, and interest of the Assignor in and to the Leases shall, by virtue of this instrument, thereupon vest in and become the absolute property of the grantee or grantees in such deed or deeds without any further act or assignment by the Assignor. Assignor hereby agrees to execute all instruments of assignment or further assurance in favor of such grantee or grantees in such deed or deeds, as may be necessary or desirable for such purpose. But nothing contained herein shall prevent Assignee from terminating any subordinated lease through such foreclosure.

13. Notices. All notices, demands, or documents of any kind which Assignee or Assignor may be required or may desire to serve upon the other hereunder shall be sufficiently served by delivering same in the manner specified in the Loan Agreement for giving of notices.

14. Binding Effect. The terms, covenants, conditions, and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors, and assigns, and all lessees, subtenants, and assigns of same, and all occupants and subsequent owners of the Property, and all subsequent holders of the Note and assignees of the Deed of Trust.

15. Interpretation. In this Assignment, whenever the contest so requires the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case.

16. Rights Cumulative. The rights and remedies of Assignee under this Assignment are cumulative and are not in lieu of, but are in addition to all other rights or remedies which Assignee shall have under the Loan Documents, or in law or equity, all of which rights and remedies may be exercised concurrently.

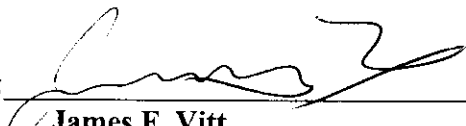
17. Severability. If any term of this Assignment, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Assignment, or the application of such term to persons or circumstances other than those as to which such term is invalid and unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent permitted by law.

18. Captions. The captions herein are for reference purposes only.

19. Governing Law. The provisions of this Assignment shall be governed by and construed in accordance with the internal laws of the State of Minnesota applicable to contracts made and to be performed wholly within such state (without regard to principles of conflicts of law applicable under Minnesota law) and any applicable laws of the United States of America; provided, however, that with respect to the provisions hereof which relate to title or the creation, perfection, priority or enforcement of liens on real property, or as otherwise required by the laws of the State of Mississippi, being the state in which the Project is located, this Assignment shall be governed by the laws of the State of Mississippi, it being understood that, to the fullest extent permitted by the laws of the State of Mississippi, the laws of the State of Minnesota shall govern the validity and enforceability of this Assignment.

**IN WITNESS WHEREOF**, this Assignment has been duly executed by Assignor the day and year first above written with actual execution on the date set forth in the acknowledgment below.

**Net Lease Development LLC**  
(A Delaware Limited Liability Company)

By:   
**James F. Vitt**  
Its: Vice Manager

## STATE OF MINNESOTA

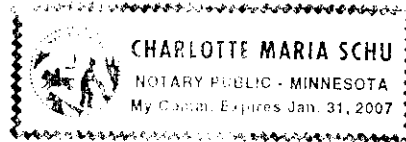
## COUNTY OF HENNEPIN

Personally appeared before me, the undersigned authority in and for the said county and state, on this 31<sup>st</sup> day of July, 2003, within my jurisdiction, the within named James F. Vitt, duly identified before me, who acknowledged that he is the Vice Manager of **Net Lease Development LLC**, a Delaware manager managed limited liability company, and that for and on behalf of the said limited liability company, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

*Charlotte Maria Schu*  
(NOTARY PUBLIC)

My commission expires:

1-31-07  
(Affix official seal, if applicable)



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**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1, Phase 2, Craft-Goodman Commercial Subdivision in Section 28, Township 1 South, Range 6 West, City of Olive Branch, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 82, page 6, in the office of the Chancery Clerk of DeSoto County, Mississippi.

BK0099PG0599

STATE MS.-DE SOTO CO.

FILED

AUG 4 4 25 PM '03

ps  
ps

BK 99 PG 599  
W.E. DAVIS CH. CLK.

**RETURN RECORDED DOCUMENT TO:**

Malkerson Gilliland Martin LLP  
1750 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-4502  
Attn: Kathleen M. Martin

This Instrument Prepared by:  
Malkerson Gilliland Martin LLP (KMM)  
1750 Pillsbury Center South  
220 South Sixth Street  
Minneapolis, MN 55402-4502

662-393-4450

**MEMORANDUM OF LEASE**

**THIS MEMORANDUM OF LEASE** (the "**Agreement**") is entered into as of July 31, 2003, by and between NET LEASE DEVELOPMENT LLC, a Delaware limited liability company ("**Landlord**"), and BLAZIN WINGS, INC., a Minnesota corporation ("**Tenant**").

**RECITALS**

A. Landlord and Tenant are parties to a lease dated July 31, 2003, as amended by Amendment to Lease dated July 31, 2003 (collectively, the "**Lease**"), in which Landlord agreed to lease to Tenant and Tenant agreed to lease from Landlord that certain tract or parcel of land located in DeSoto County, Mississippi, legally described in attached **Exhibit A** (the "**Property**").

B. The parties desire to record a memorandum of the Lease for the purposes of putting third parties on notice of the existence of the Lease, and the rights of Landlord and Tenant thereunder.

**PROVISIONS**

In consideration of the contemporaneous execution and delivery of the Lease, the mutual covenants of the parties set forth in this Agreement, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Lease**: Landlord hereby leases to Tenant and Tenant hereby leases from Landlord the Property, under the terms and conditions set forth in the Lease dated July \_\_\_, 2003, as amended by Amendment to Lease dated July \_\_\_, 2003. The covenants, terms and conditions of the Lease are hereby incorporated by reference into this Agreement.
2. **Lease Term**: The initial term of the Lease (the "Term") shall commence on the Commencement Date (as defined in the Lease) and will continue for a term of fifteen (15) years after the Commencement Date, unless: (i) earlier terminated in accordance with the provisions of the Lease; (ii) extended by Tenant through exercise of Tenant's options to extend the Term, as described in Section 4 hereof.
3. **Option to Extend the Term**: Tenant has four (4) options, under the Lease, to extend the Term for five (5) years each.
4. **Effect of Agreement on Lease**: Nothing contained in this Agreement shall be construed to amend, modify, change, alter, amplify, interpret or supersede any of the terms, covenants, or conditions contained in the Lease. If any aspect of the Lease, as described in this Agreement, should appear to conflict with the terms, covenants, or conditions contained in the Lease, the terms, covenants, and conditions of the Lease shall control.

**[Balance of Page Left Blank; Signatures and Acknowledgments on Following Pages]**

**LANDLORD:**

**NET LEASE DEVELOPMENT LLC**, a Delaware  
limited liability company

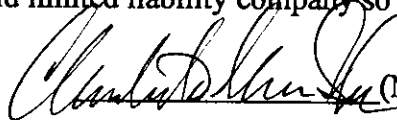
By: \_\_\_\_\_

Name: James F. Vitt

Title: Vice Manager

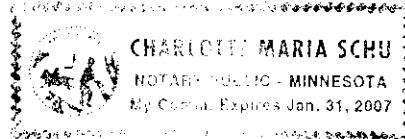
**STATE OF MINNESOTA****COUNTY OF HENNEPIN**

Personally appeared before me, the undersigned authority in and for the said county and state, on this 31<sup>st</sup> day of July, 2003, within my jurisdiction, the within named James F. Vitt, who acknowledged that he is the Vice Manager of **Net Lease Development LLC**, a Delaware manager managed limited liability company, and that for and on behalf of the said limited liability company, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said limited liability company so to do.

 (NOTARY PUBLIC)

My commission expires:

1-31-07  
(Affix official seal, if applicable)



## TENANT:

BLAZIN WINGS, INC., a Minnesota corporation

By:

Name:

Title:

James M. Schmidt  
James M. Schmidt  
Vice President

## STATE OF MINNESOTA

## COUNTY OF HENNEPIN

Personally appeared before me, the undersigned authority in and for the said county and state, on this 30 day of July, 2003, within my jurisdiction, the within named James Schmidt, who acknowledged that (he) (she) is the Vice Pres of **Blazin Wings, Inc.**, a Minnesota corporation, and that for and on behalf of the said corporation, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said corporation so to do.

Barbara McMahon  
(NOTARY PUBLIC)

My commission expires:

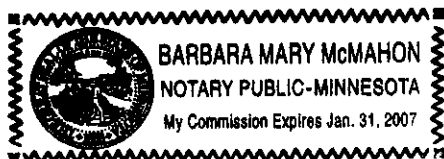


EXHIBIT A

Lot 1, Phase 2, Craft-Goodman Commercial Subdivision in Section 28, Township 1 South, Range 6 West, City of Olive Branch, DeSoto County, Mississippi, as per plat thereof recorded in Plat Book 82, Page 6, in the office of the Chancery Clerk of DeSoto County, Mississippi.